

North Carolina
Report
of the
Special Committee
to provide
for calling a
State Convention

1869-70



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REPORT OF THE SPECIAL COMMITTEE ON THE
SENATE BILL TO PROVIDE FOR CALLING A
STATE CONVENTION.

To the Senate of North Carolina :

The undersigned, members of the Special Committee, to whom was referred the Senate bill entitled "An act to provide for calling a Convention of the people of North Carolina," would respectfully recommend a favorable consideration of said bill by the General Assembly. A notice of some of the reasons therefor will not be deemed inappropriate.

The circumstances under which our present State Constitution was formed and adopted were such that serious errors and imperfections were almost unavoidable. It was in a time of change and revolution, of social and political chaos, of conflicting interests and opinions, and of general depression and demoralization. Troublesome questions respecting our Federal relations and the rights of the races,—questions now settled,—then convulsed the public mind. The situation was peculiarly unfavorable to the exercise of that sober wisdom so needful in framing a permanent organic law for a great State.

Our changed social condition, as well as the requirements of Congress, made it obligatory on us to alter and remodel some of our old forms, admit new ideas, infuse a new spirit and somewhat modify our ancient customs and usages. This fact we all recognized; and all would have been satisfactory, if the framers of our new system had simply made such changes

in our old polity as were necessitated by our social revolution and by the enactments of Congress. Then the sturdy old North Carolina character and individuality would have been preserved; and being reinvigorated, refreshed, and made alive, would have begun a noble developement under new auspices.

But the spirit of innovation carried our Constitution-makers far beyond the necessities of the time and the wishes and requirements of the Federal authorities. Instead of pruning off dead branches, and grafting fresh scions on, they uprooted the tree and planted another in its place. Instead of modifying our system, they destroyed it and imported a wholly novel one. Our present system is not native and indigenons; it is exotic. It is not the product of the staid, sober, sterling North Carolina mind; it is the invention of experimenters not well acquainted with the genius of our people. Under it we shall never develope, as we ought to do, into a grand, vigorous new North Carolina, but into an awkward caricature and feeble imitation of other State models. Our growth, like that of a transplanted tree, will be unhealthy, ungraceful, and unfruitful.

A very large portion of our citizens, who voted to ratify our present Constitution, did not approve many of its prominent features. But we were in an anomalous and disagreeable position. A restoration of the State to the Union, and relief from the yoke of military government, were ardently longed for. These happy results were expected to follow a ratification of the Constitution; so shutting their eyes to its faults, stopping their ears to objections, and preferring *any* form of civil government to military, the majority voted to ratify it, with the general expectation and intention of having it amended soon. The necessity of its amendment is now apparent to a very great majority of the people, without respect to party or race. They desire a constitution more in conformity with their circumstances and their true spirit and character. The people of North Carolina have always been distinguished for the simplicity of their tastes, their frugality and economy, their honesty and integrity, their scorn of empty pretension,

and their sturdy independence. They ought to have a system of internal government in accord with these characteristics; and this they will have, if they are permitted to come together and make a government for themselves, the true type and embodiment of their own genius, instead of having a government made for them.

It is due our people to declare, and important for our fellow-citizens of the whole Union to understand, that the desire to amend our Constitution proceeds from no purpose or design to annul or abolish those of its features which guarantee the inviolability of the Union, the equal rights of the races, or any of the other legitimate results of the recent war, as embodied in the Congressional plan of reconstruction. All these are regarded here as settled questions. The purpose is only to make such amendments as will secure to the State a system of internal administration that will be simpler, cheaper, more suitable to our situation, and more efficient in promoting the public peace, dispensing public justice, and advancing the material interests of the State.

The grandest mistake in our existing Constitution, and that which of itself would warrant the call of a Convention to remedy it, is the change it has made in our Judicial system. An effective method for dealing out cheap and impartial justice is the very soul of a government. This we once had in North Carolina. But that splendid temple in which such men as Gaston and Ruffin ministered as high priests is in ruins. The people remember and long for it again, like the captive Jews longed for their ruined sanctuary. Shall it not be rebuilt? From all the land comes up the response—It shall!

Our present Judicial system is a servile copy of that of New York, a State less like ours than almost any other in the Union. New York is densely populated, North Carolina sparsely. New York is full of large towns and cities, and her people are extensively engaged in commercial and maritime pursuits. North Carolina is an agricultural State with a rural people. The New York system was devised upon a model deemed suit-

able to a dense, commercial community; and yet it is well known that it was adopted there through an innovating freak of the Legislature of 1848, without consulting the people, who, if they had understood its true character before it was fixed upon them, would probably have frowned upon it. Many alterations have been found needful in it there; still there is great dissatisfaction with it, and the desire for its total abolishment and a return to the old ways is becoming very general. This costly, cumbersome, impracticable system which New York is seeking to cast off has been imported into North Carolina where it is tenfold more unsuitable, and where it is already regarded, by nearly everybody, as little short of a public nuisance.

The "Code of Civil Procedure" and kindred inventions which we have borrowed from New York, inaugurate a complete revolution in the system of practice and proceeding in Courts, superceding the old common-law methods. Instead of improving the old system, as has been so successfully done in England since 1834, the New York innovators in 1848 destroyed it entirely, and introduced this novelty. Some other States, and finally North Carolina, followed the rash example. Upon the workings of this "Code" in New York, an able treatise was published two years ago by W. H. Greene, of Buffalo, to which inquirers are referred for a description of the enormous confusion which has resulted from it. It would have been abolished there long since but for the fact that the great increase of fees and charges under it has interested so many officials in its perpetuation. This is a strong reason why we should abolish it at once, before it becomes a fixture here through its very evils in opening up avenues to speculation and extortion.

Upon this important subject of the folly of casting aside the common-law forms and substituting novel "Codes" like this, the Supreme Court of the United States has often spoken in strong terms. It is inconvenient to make extensive quotations from its reports, but the Senate will pardon an extract

from the opinion of that Court in the case of *McPaul v. Ramsay*, (20 Howard, 523,) a case coming up from Iowa, a State which has a "Code" very much like our new one. The Supreme Court says:

"The Common Law, which wisely commits the decision of questions of law to a Court supposed to be learned in the law, and the decision of questions of fact to a jury, necessarily requires that the controversy, before being submitted to the tribunal having jurisdiction of it, should be reduced to one or more integral propositions of law or fact; hence it is necessary that the parties should frame their allegations to support respectively the demand or the defence into certain writings called pleadings. * * * * The end proposed is to bring the matter of litigation to one or more points, simple and unambiguous. At one time the excessive accuracy required the subtlety of distinctions, * * * The introduction of cumbersome forms * * * had brought the system of special pleading into disrepute. * * * But in modern times it has been trimmed of its excrescences, and the pleadings in every form of common-law action have been reduced to simple, clear and unambiguous forms. * * * This system, matured by the wisdom of ages, founded on principles of truth and sound reason, has been ruthlessly abolished in many of our States, who have *rashly* substituted in its place *the suggestions of sciolists, who invent codes and systems of pleadings to order*. But this attempt to abolish all species and establish a single genus is found to be beyond the power of legislative omnipotence. They cannot compel the human mind not to distinguish between things that differ. The distinction between the two forms of action for two different wrongs, requiring different remedies, lies in the nature of things: it is absolutely inseparable from the correct administration of justice in common law courts.

"The result of these *experiments* * * * has been to destroy the certainty and simplicity of all pleadings, and introduce on the record an endless wrangle in writing, perplexing

to the court, delaying and impeding the administration of justice. In the case of *Randon vs. Toby*, 11 Howard, 517, *

* * a simple action on a promissory note, the pleadings of which, according to common law forms, would not have occupied a page, they were extended to over twenty pages, requiring a two years wrangle * * * before an issue could be formed. * * * In the case of *Bennett vs. Butterworth*, 11 Howard, 667. * * * The court was unable to discover from the pleadings the nature of the action or of the remedy sought. It might, with equal probability, be called an action of debt, or detinue, or replevin, or trover, or trespass, or a bill in chancery. The jury and the court below seemed to have labored under the same perplexity, as the *verdict* was for \$1200, and the *judgment* was for *four negroes*. * * * This court has endeavored to impress the minds of the judges of the District and Circuit Courts of the United States, with the impropriety of permitting these *experimental codes* of pleading and practice to be *inflicted* upon them. In the last mentioned case the Chief Justice, in delivering the opinion of this court, says: 'The Constitution of the United States has recognized the distinction between law and equity, and it *must* be observed in the Federal Courts.'

"In the States where the courts of the United States administer the common law, they cannot adopt these *novel inventions*. * * * We have made these remarks in order that the bar and courts of the United States may make their records conform to these views, and not call upon us to construe new codes and hear special demurrers and pleadings, which are not required to conform to any system founded on reason and experience."

These weighty words from the Supreme Judiciary of the Union are commended to those who reverence profound wisdom and experience, speaking in harmony with the sanctions of the Federal Constitution itself. Shall we in North Carolina listen to these words and root out this new "Code;" or shall we still be led by the nose by one or two freshly imported innovators

far more remarkable for *pertinacity* and *self-assertion* than for *sound sense* or *legal learning*?

The cost of litigation under this "Code" is hugely increased. Formerly a case in a Justice's jurisdiction cost *forty cents*, now *two to five dollars*, perhaps more. In the Superior Courts it is increased in like manner. Fees are doubled and quadrupled in all directions. It is impossible to give details. They are found on nearly every page of the "Code." Some ado has been made about the abolishment of the little old *four* dollar fee of attorneys, and behold, a *fifteen* dollar fee for attorneys is snugly inserted under another name! The people are entitled to know such things, and they must. The purpose, it is argued, of the great admitted increase in costs is to keep down litigation. This really means that instead of granting the people cheap justice, we must frighten them away from the courts by the fear of ruin through costs and charges wantonly imposed. Noble idea! worthy of the "sciolist who invent codes to order!" But all experience shows that litigation is greatly multiplied by such "Codes." A distinguished lawyer, once on our Supreme bench, points to the telling fact that all the decisions, upon *technicalities* strictly, rendered by the Supreme Court of North Carolina in the past seventy-five years, would not fill two volumes, while the same class of decisions in New York, in the last twenty years, would fill fifty volumes. That needs no comment.

Another great error in our judicial system, not yet fully realized here, but profoundly felt in New York and recently changed there, is the shortness of the official terms of the Judges and no prohibition against their being re-elected. A judge for life or a very long term is inspired by the dignity of his vocation, the glory of the ermine, and the ambition to leave after him an honorable fame as a pure, able and learned jurist. These are noble motives and influences, and they have made our judiciary resplendent in the past. But elect your judges for short terms, make them the playthings of the popular breath, and you drag them down from the pinnacle where

justice sits robed in eternal sunshine, into the fog of passion and prejudice, if not of corruption. You, in a manner, compel them to be politicians and therefore partisans, and expose them to evil influences without number. Some will stand firm and remain pure; some will become corrupt, but *all* will be suspected. Those who *deserve* public confidence, will often fail to command it; for multitudes will suspect others of yielding to temptations which themselves would not resist. And popular distrust of the judiciary is an evil only less than a corrupt judiciary itself. Instances are not wanting in North Carolina at this moment to prove this truth. Men forsaking the courts and taking the law into their own hands; private and neighborhood feuds, outrages and violence agitating this Assembly and disturbing the peace of the State, all proceeding from a want of confidence in some of our judicial officers, and this perhaps undeserved. The fault is not so much in the officers, it is in the system, and the evil can only be eradicated by amending our Constitution and returning to our old plan of appointing Judges for life. Perhaps very long terms might do, with ineligibility afterwards.

The expense of the present Judicial system is much greater than that of the old one. Then we had eight Superior, and three Supreme Judges, and their salaries amounted to \$23,100. The whole Department of the Judiciary cost less than \$30,000 a year. Now we have twelve Superior, and five Supreme Judges, whose salaries amount to \$42,500: though the individual salaries of the Supreme Judges stand at the old figure, and are relatively less than those of any other officers. The public Treasurer (see his Report of Feb, 8th 1870) estimates the whole cost of this Department for the current fiscal year at \$54,000. Here then, in this Department, is an *increase* of \$24,000, or more, over the former expense. How many children would this educate who will die in ignorance for the want of it?

But it is said these additional judges are needed because the county courts are no more. But the County Courts cost little

for salaries or fees of officers. They dealt out substantial justice in a plain and simple way. They educated the people in the most common and practical parts of the administration of the law, and gave even illiterate men much useful knowledge of legal forms and proceedings. They were emphatically the people's courts, and the people want them back again. With some slight improvements, no more useful tribunals ever existed in any country. Among other excellences, they constituted the cheapest and most honest system of county government ever devised. Moreover, the great mass of business pertaining to the administration and settlement of estates, to guardianships, to the probate of wills, and the many kindred subjects, was done by these courts, in the easiest and simplest manner, and at very small cost.

Under the present system, exceedingly cumbrous proceedings and forms are required in this latter class of business, so that taking out letters of administration is as troublesome as a superannuated suit in Equity; and the whole matter of estates, wills, deeds, guardianships, partition, dower, and numberless other things, are thrown on the hands of the Superior Court Clerk; and if the *innovators* could have full sway, he would also decide most of the cases in the Superior Court itself. But this last idea is temporarily checked. Nevertheless, as it is, this clerk's office is the grand receptacle of miscellanies,—a curiosity shop,—a farmer's old barrel into which all kinds of plantation tools and old irons and trinkets are tumbled pell-mell. No one man can properly discharge such a variety of duties, in addition to his appropriate duty as Clerk of the Court; and endless confusion will soon show itself in this quarter.

The cost here, in the way of fees and charges, is also immense. This Assembly has just passed an Act making the Superior Court Clerk of one County a salaried officer with a salary of \$5000; for the reason, as was stated on this floor, that the said clerk was receiving in fees an unknown number of thousands—perhaps *twenty* thousand dollars a year. Are the people to endure a system by which ten, fifteen, or twenty

thousand dollars of fees are annually paid to a single County officer? You give a Clerk a salary of \$5000, equal to that of the Governor; but you do not thereby stop the extra amount of fees from coming into his office out of the people's pockets.

From the statements made here while that bill was under debate, it is certain that the eighty-nine Clerks of the Superior Courts receive, on an average, \$4000 a year each; making, for the whole State, the vast sum of \$356,000 annually for this one class of officers. In old times it was scarcely one third as much; and after duly allowing for the former expense of transacting the *extra* work now thrown on these clerks, which used to be done very cheaply by the county courts and otherwise, it is safe to say that the *business now* transacted in the offices of the Superior Court Clerks costs the people at least \$150,000 a year more than the very same matters cost under the old system. True, this is not paid as taxes; but it is paid as fees and charges; and where is the difference! It comes out of the people and forms a part of their burdens.

If we look into the Executive Department, we find several new offices, and a great increase in salaries; so that the cost of this Department for salaries of officers and clerks is nearly three times as great as formerly. The estimates for this Department, during the current fiscal year are placed at \$45,500, by the Public Treasurer. (See his Report of Feb. 8, 1870.) This is an *increase* of \$25,000, or more, over the former expense. And then besides this, there is the swarm of subordinates about the offices and the Capitol and the Capitol grounds, doing nothing or worse than nothing, but costing an immense amount of money; who can tell how much!

How is it in the Legislative Department? The General Assembly meets twice as often as formerly, its mileage and *per diem* are twice as large; and it sits twice as long. The old General Assembly used to cost about \$60,000 biennially, or \$30,000 a year. The present Assembly has *now* sat altogether nearly *nine* continuous months. According to the aforesaid Report of Treasurer Jenkins, this Assembly has cost

the State, since October 1st, 1868, the startling sum of \$288,599.73, and besides this the State owes us now for the last month. This does not include the expense of our first, or Summer Session of 1868. The Treasurer (see his Report) estimates the expense of the Legislative Department, for this current fiscal year alone at \$173,700. This is an *increase* in the annual expense of this Department, over that of old times, of \$143,000, or more.

Besides all this, there is the expense of the Asylums, of elections, of "contingencies," &c., &c., most of these costing immensely over former figures. A reference to the aforesaid Report of the Treasurer will show that the annual cost of the *State* government proper, without paying any interest on our debt, is at least \$300,000 more than under the old system. Look at the following overwhelming figures showing the money used by the present State government since it began in July, 1868; viz:

Surplus in Treasury, July 1, 1868,	\$ 42,164 31
Ordinary State Tax for 1868, (See Report,)	250,726 19
Proceeds of Dividend on N. C. Railroad,	117,600 00
General Fund Tax for 1869, (See Report,)	485,000 00
Deficit now (about)	260,000 00
Total general fund receipts,	\$1,155,490 00
Deduct amount paid as interest on our old debt	
October 1, 1868,	111,153 00
Balance,	\$1,044,337 50

The above figures are taken from the Reports of the Treasury itself, and are indisputably correct. And the aforesaid *balance* of \$1,044,337 50 shows the sum which has been expended and incurred, merely in carrying on the machinery of the *State* government *proper* since July 1, 1868, less than twenty months, or one year and two-thirds of another. This is equal

to \$626,600 per year. In 1859 the State government cost \$212,385 78. (See Report of D. W. Courts, Treasurer.) In 1860 it cost considerably less, as the Assembly did not meet in that fiscal year. (See Report of C. H. Brogden, Comptroller.) After making all possible allowances, it is certain that we do not exaggerate when we set down the *increase* in cost of *State* government under \$250,000 a year more than formerly, the present system at \$300,000 a year.

The Treasurer tells us the deficit will amount to \$300,000 by the first of April. He knows not how to raise funds to meet it. Nobody will loan him any thing. He therefore asks us to levy an early crop of spring taxes, 20 cents on the \$100, to be collected by April 15th, 1870. He also proposes an *extra* tax to build the Penitentiary and support the Asylums, to be payable July 15th, 1870, and the tax payer to be charged interest of *one per cent.* for the first month, and *two per cent.* a month afterwards on his tax while it remains unpaid, after July 15th. He also asks us to instruct the Board of Education to loan its moneys to the State; and recommends that the opening of the public schools be postponed. (See his report, Feb. 8, 1870.) These extraordinary propositions show the desperate straits we are in. They truly indicate panic and despair. We thought taxes, and heavy ones, once a year were bad enough. But here is a Spring tax, and a Summer tax, besides the regular Fall tax.

We need a Convention to stop this wild career towards beggary and utter ruin. The way to do it is to amend the Constitution so as to limit salaries and expenses to a *low figure*; limit also *per diem* of the Assembly to *three* or *four* dollars; mileage to five or ten cents; limit the duration of Legislative sessions, and have fewer of them. As it is, the laws are changed so often the people are kept in utter uncertainty and confusion on this subject. It is sometimes objected that a Convention will cost a great deal, But Senators can easily see, from the above figures, that a Convention, by altering our system so as

to reduce salaries and expenditures, would in one year save to the State enough to pay for its own cost three times over.

Let us glance briefly at County and Township matters. Authentic information from one county, about an average one, shows that its Board of Commissioners and other officers cost \$3,500 a year; in the same County the old County Courts, doing more work and doing it better, used to cost \$1,500, a difference of \$2,000 against the new system. Leaving out all other items in the County governments, the above ratio gives an *increase* of \$179,000 annual expense in the eighty-nine Counties. As for the *Townships*, there are over seven hundred of them in the State, and the expense of *governing* each may be safely estimated at not less than \$200 a year. Put down the aggregate at \$140,000, and this is entirely a new expense.

We need a Convention to take proper steps in regard to the State debt. The hopeless tangle we are in on that subject needs no comment.

We need a Convention to amend the Constitution so as to prohibit one person from holding two or more offices at once, a thing only partially prohibited now, and which threatens to grow into a great evil. Many persons are holding a Federal office and a State office also.

We need more stringent guarantees against improvident appropriations of the public money and pledging of the State's credit.

We need clearer and stronger restrictions and limitations upon the rate of taxation, and an uprooting of the present system of special State and County taxes, by which device all barriers are overleaped and the people taxed *ad libitum*.

We need a decrease in the number of offices. The great variety and multiplicity of these not only cost insufferably, but beget a fondness for office-holding, which is growing into a species of insanity all over the country.

But it is impossible to mention *all* the obviously useful and important amendments needed in our present system. We

think this report points out a number which are essential; such are the reform of the present Judicial system, and the abolishment of its pendant—the “Code”; the simplifying of the duties of Superior Court Clerks; the restoration of the County Courts; the remodeling of the county governments, and other matters suggested above. A general reform is needed in *all* departments, with a view to greater *economy*: so that we may perfect our School system, and convert the hundreds of thousands of dollars now wasted on useless officials into a fund for the advancement of the sacred cause of Education.

The estimates and figures embodied in this report, which by no means embrace all the items of expenditure, and which we have tried to set forth without exaggeration, when brought together show the following *increase* of annual expenses, costs, fees and taxes for merely carrying on the *State* and *County governments* on the present plan, to wit:

State government, increased cost,	\$300,000
Business done in Superior Court Clerk's office, increased cost,	150,000
County Commissioners, &c., extra cost,	179,000
Township governments, new expense,	140,000
Total <i>increase</i> ,	\$769,000

Such is the vast amount uselessly spent in various ways, and therefore *wasted*, annually, under the present system of internal government in North Carolina. Do we not need a change?

No wonder the State is bankrupt. No wonder the treasury is empty, though a heavy tax has just come in. No wonder the inmates of our Asylums are in danger of actual want. The people groan under their burdens. The Assembly imposes taxes for the State; the County Boards levy taxes; the Township Boards levy taxes. Everybody and everything is taxed, and money pours into the public coffers; but it will scarcely lodge there over night. *Seven hundred and sixty-nine thou-*

sand dollars needless increase of annual pay to officials, while the children of both races are growing up ignorant, untutored ; thousands of precious intellectual diamonds destined never to be polished, and the State government only giving them the poor pittance of *fifty cents* a piece annually to get an education with, and the school-houses to build, too !

The people demand a change. Without regard to party or race they demand it. We ought to hear and heed their voice. We cannot, if we would, quench the mighty spirit which is awaking like a ground-swell in the hearts of the masses. We might as well try to imprison a volcano under a half-bushel, or quiet an earthquake with a cradle-song. Let us then grant the people the most effectual remedy for the evils they complain of by calling a Convention to change the present system, and remodel it upon sound principles.

The undersigned would not close this report without earnestly calling upon all sober, thoughtful and moderate men in this Assembly, and outside of it, to unite together. The people are weary of extremes. The time has come, and the hour has struck when men who love North Carolina more than they love *any* party, must strike hands in token of concord, and stand shoulder to shoulder. This is undoubtedly the spirit of the people. Let us respond to it and show ourselves statesmen and not more partisan bigots and fanatics. Let us search and see if we cannot find some solid ground on which all *true North Carolinians* can rally to redeem the State, and start her out on a new career of prosperity and glory, transcending all the past. We have been chastened by misfortune. We are in profound difficulties now. Let us learn wisdom from these lessons and begin a new era. And-as the first step in this path, let us allow the people of the State to assemble together in Convention to frame for themselves a true North Carolina government.

In conclusion, it is proper to add that though plainness and

candor have been used in this report, nothing has been said with any purpose to wound the pride or prejudices of any true North Carolinian, either native or adopted. Begging that any seeming warmth may be set down to the account of honest zeal and sincere conviction, this report is

Most respectfully submitted,

WM. M. ROBBINS, Ch'mn.

C. T. MURPHY.

